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International Court of Justice

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Final Pleadings

of Dr. Kauffmann, attorney-at-law,
on behalf of the defendant Kaltenbrunner

The present trial in the torrent of a revolution.

May it please the Tribunal,

The present trial is world history, but world history full of revolutionary tensions. The ghosts which were called are stronger than the cry of the suffering peoples for justice and peace. Ever since deification of man and humiliation of God chaos as an inevitable consequence and punishment is afflicting mankind with wars, revolutions, famine and despair. If my country was culpable of the greatest guilt, then permanently, it does the greatest penance a people has ever done.

The means for restoring the so much longed-for prosperity are erroneous, because they are second-rate. And no one of my listeners is in a position to call me a liar, when I assert that the present trial does not begin at the end of a period of wrong, to make an end to it, but is being surrounded by the surge of the waves of a furious torrent, on the surface of which the wreckage of a civilization, guarded through the centuries, is floating hopelessly, and on whose deep demoniacal bottom the foes of the true God, of Christian religion and, therefore of any Justice, are lurking.

[illegible]

The European commonwealth of peoples, whereof my country has been the heart piece, is seriously ill. It suffers from the spirit of negation and from the humiliation of the dignity of human nature. Rousseau would curse his own maxims if he had lived to see the radical refutation of his theories in these years of the 20th century. The peoples had announced the "liberty" of the Great Revolution, but in the course of but 150 years they have in the name of the same liberty created a monster of cruel slavery and ungodliness, which was able to escape earthly justice, but not to elude the living God.

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The Tribunal before history.

This Tribunal conscious of its task and its mission will some day have to pass before the probing eye of history. I do not doubt that the selected judges are striving to serve Justice as they see it. But will not this problem indeed be beyond solution? The American chief prosecutor stated that in his country important trials seldom begin before one or two years have elapsed. I do not need to throw light upon the deeper core of truth contained in this practice. Would it be possible for human beings, torn between love and hate, justice and revenge, to conduct a trial immediately after the greatest human catastrophe ever known and constantly driven by the statutory demand asking for time-saving, swift proceedings, in such a way that they are entitled to the thank of mankind at a time when the waters of this second deluge will have receded into their former bed?

Would it not have been better if the above-mentioned distance between crime and atonement would have been adhered to in the course of the present proceedings ?

Law can be shaped only, when the court possesses inner liberty and independence of such nature as to feel subject to no other considerations than to conscience and to God himself.

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Such an august activitv had sunk into oblivion in my countrv, in the first place in the mind of the governing class of the nation, Hitler had humiliated law to the rank of a prostitute of purpose. But this Tribunal intends to furnish proof to the world that all profit for the peoples is based on law alone. And no other thought than unselfish justice could arouse more joy and hope within the heart of people of good will.

I am not criticizing - it would serve no purpose - the previsions of the Charter, but I am asking whether any Justive on earth has and indeed could have been found, if Might acknowledged Reason so far as to grant the enemies a regular trial, but could not make up its mind to crown this tribute to Reason bv appointing a truly international tribunal; 19 nations appear to have approved of the legal basis of the Charter - we do not know this, but Mr. Justice Jackson indicated it - it is far more difficult to apply the written law.

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The American chief prosecutor has emphatically declared that he did not intend to hold the entire German nation guilty, but the records of this tribunal, which History will someday scrutinize attentively, contain nevertheless many things which, to us Germans, appear to be false and therefore, embittering; they unfortunately also contain repeatedly explicit questions of the French prosecution, to what extent, for example, certain crimes against humanity both in and outside Germany have become known to the German people; indeed, the French prosecution has asked explicitly: " Could those atrocities remain, on the whole, unknown to the entire German nation, or have they come to its knowledge ?" These and similar questions

are not suitable for solving such a difficult and tragic problem with even the slightest regard for the truth. To the extent that evil, which always grows and manifests itself organically, gets the upper hand among a nation, to that extent every individual who has reached the age of reason bears some guilt for the catastophes of his country. But even this guilt, lying in the sphere of mataphysics, never could become a collective guilt of a nation, unless every individual also in this nation had incurred an individual guilt. But who would be entitled to establish such an individual guilt without examining thousands of individual circumstances ?

The problem, however, becomes even more difficult should one try - and this is aimed at - to establish the so-called national guilt for any crimes actually committed against peace, humanity, etc., during the past years on the part of the omnipotent state in whatever possible form. One should bear in mind most carefully the condition of the Reich before 1933.

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This has been done sufficiently here and I do not speak about it. Hitler monopolized such deep-reaching concepts as the proverbial German diligence, homeliness, sense of family, willingness to make sacrifices, aristocracy of work and hundreds of other things. Millions believed it, millioms did not. The best people did not abandon the hope, that they would be able to avert the tragedy foreboded by them. They flung themselves into the stream of events, collected the virtuous ones and fought, visibly or invisibly, against the bad ones. Can a plain, uneducated man in the street be blamed for not being ready to deny Hitler offhand every credibility, as a man who knew how to pass as a seeker of truth, and who every time showed to peacelovers the highly extolled palm of peace ? After the assumption of power large sectors of the German people could feel themselves at unison with many other peoples on earth. Therefore, it is not astonishing that gradually, with the approval or the tolerance of other countries, Hitler acquired the nimbus of a man, unique in the century. Only the German who lived during the past years in Germany and did not scour from abroad, as with a telescope, the German space, is finally authorized to give information concerning the historical facts of an almost impenetrable method of secrecy, the psychosis of fear and the actual impossibility of changing the regime, and herewith to comply with Ranke's demand to historians, to establish "how it came to pass".

Ought the artisans, peasants, merchants or housewives etc. have asked categorically Hitler or Himmler for a change ? I should calmly like to let the prosecutors answer this, as I am of the opinion that there are living in my country no fewer idealistic and heroic people than in any other country.

It will never be possible to ascertain how large a number of Germans knew and approved of concentration camps, their terror etc. Only if one could establish knowledge and approval in the soul of every individual German, considering general and particular conditions prevailing in the Germany of the last 12 years, and this is not the moment to discuss these, these, but only these, could be considered guilty.

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Therefore, I do not think it just to put, to a larger or smaller extent, the principle of collective guilt in the place of individual responsibility, valid in all civilized nations, which unfortunately was likewise applied by the national socialist regime to a people and almost led to its complete extermination. May there be no repetition of the preamble of the Treaty of Versailles, this weighty document of the 20th century.

The task of the defence.

We, the defence counsels, do by no means overestimate our tasks in this court. Do we indeed have a task ? Is it at all possible for counsel to recognize a mission, in view of such outrages of human reason and morals ? And, moreover, we happen to belong to a nation in whose womb the birth of the evil incarnate took place. What would counsel [illegible] have to say to other nations at all ? However, the charter of this court directs the establishment of a defence. We reject the notion that this was but a mere gesture; therefore, it can only be the idea of law which orders us to act here, and this idea requires justice and truth, and truth is not conceivable without love. It is the highest and last principle - unfortunately despised by many - which, in my country, had to make way to the principle of hate.

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Hate and pride have stood and stand at the beginning of every collapse. It is, therefore, that justice we are serving and which we are longing for with a still more ardent heart.

In this trial, error and truth are mysteriously mixed, probably, moreso, than they ever were in a great trial of law. The highest interests are at stake. In the deepest corner of the souls of the tortured victims those dark powers of hate and revenge have settled, which darken the image of recollection in every man at the expense of truth, and which induce to add, transcending the oath, what has not taken place, to omit, what has occurred, and which make it difficult even for the mortal judge to pronounce the right judgment.

Trying to ascertain the truth raises the defence counsel to the dignity of an assistant of the court. The task of the defence counsel is therewith fulfilled. It entitles the defence counsel not only to doubt the credibility of witnesses, but also of documents, above all of government records. It entitles the defence counsel to declare before the whole world that such records, even if they are admitted as evidence by the charter, can be acknowledged but with serious apprehension. No defendant, no counsel, no authorized neutral agent has ever had the possibility of influencing them. Such statements certainly took place within the sphere of law, but also within the sphere of power.

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The Defense Counsel before this Tribunal should be in a positi to do more. The people, or a large part of the people, in their aspiration for peace and happiness elevating the representative of a terrible heresy to the position of their Fuehrer I might say to a demigod; this Fuehrer abusing the faith of his followers in the grossest imaginable way; this people th in the bondage of a slave not being able to find the strength for a timely open resistance and tumbling into the huge abyss of annihilation of its entire racial, political, spiritual and economic existence: All of this, in the truest sense of the word is tragic. Had the individual man in the street, the mother in the home and her sons and daughters been asked to choose between peace or war - never voluntarily had they drawn the lot of war. The unsatisfactory element of this trial is the absence of the man, whose demoniacal spirit was the fundamental source from which the leading men of the regime and many Germans fed their spirit, strenghtened their will; put aside their scruples, renewed their strength, it hardened their erroneous conception and, some of them, killed their conscience, Hitler is missing in the dock. The propaganda had for years repeated the sentence: "Hitler is Germany and Germany is Hitler." But this man was not a German, he was, indeed, not even a member of any other people, he was - in the last analysis, camouflaged and not ecogniseable for many-a legitimate son of the foul fiend. Who could say, that I am not right ? He drops the last mask when, in his testament he declares, that in the event of defeat of the German nation, he would not shed a tear. He together with his satellites took his own life and thereby demonstrates the cowardly wickedness of his nature in all its meanness. But the peoples should have pity on the nation, at whose head he stood.
Himmler, himself drawing from this black fountain, explained to the men of the task force (Einsatzkommando) of the East: of their bloody task the Fuehrer would assume all responsibility upon himself, and the witness Ohlendorf, who admitted the so-called liquidation of 90.000 men, women and children repeatedly stated, that while he had "killed" he had not "murdered". Does the world recognise from such symptoms, which could be increased a hundred fold, that a tremendous metaphysic happening rises behind the events of the last years in Germany ?

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Development of the history of intellectual pursuits in Europe.

The rise of Hitler and his downfall, unique in its extent and consequences, may be viewed from, regardless what side: From the perspective of the historic spectacle of German history, or of the supposedly constrained course of economic forces; of the sociological separation of its people, of the racial and character conditionalities of the German; or of the mistakes which the other brothers and sisters of the family of nations, living in the same house, committed in the political sphere: All this does certainly round out the picture of the analysis but always it brings to light only partial knowledge and partial truth. The deepest and, at the same time the most fatal reason for the phenomenon Hitler lies in the metaphysical domain. In the final result the second world war was unavoidable. Anyone however, who, looks at the world and its aspects only from the view point of economic problems, may arrive at the belief that the war, the first as well as the second world war, could have been avoided through a reasonable distribution of the wealth of this earth. Regarded by itself alone, economic reasons are never able to change the face of the earth; therefore the change of the standards of living of the German people, their deterioration, the demoralisation of the national soul by the Treaty of Versailles, inflation, enormous unemployment and others became rather the outward cause for Hitler. Still it is possible that catastrophes migh be delayed by years or decades, if certain outward living conditions make the mutual relationship of the nations and people apparently happy. At no time however, can a wrong idea be extinguished through economic disposition alone, and be deprived of its destructiveness for the individual and for the nations, unless the people overcome and replace these ideas by spiritually better ones.

. In the manner in which the name of God is used by the people and nations, says the famous Donoso Cortes, lies the solution of the most feared problem.

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Here we have the explanation for the providential mission of the nations, of the races, for the great changes in history, for the rise and downfall of empires, for conquests and wars, for the different characteristics of the nations, for the physiognomies of the nations, yes even for their changing fortunes.

Monsieur de Menthon has tried to analyse National Socialism intellectually. He spoke of the "sin against the spirit" from which all crimes originated, he called National Socialism a coarser Darwinism, he emphasizes that the National Socialist mentality condemns humanism,

and sees the deeper motives

in the turning away from Christianity. I cannot give him the lie on that. I wish to say something here : Hitler was not a meteor, the fall of which was incalculable and unpredictable. He was the exponent of an ideology which was atheistic and materialistic, to the last degree,

. There is every reason to reflect that although National Socialism is eliminated through the complete defeat of Germany and although the world is now free of the German threat, proclaimed by all nations, there has been no change for the better. No peace has filled our hearts, no rest has come to any corner of human existence. It is true, the collapse of a powerful state with all its physical and spiritual forces will send out waves for a long time, as the sea is stirred into motion when a large stone is thrown into the calm water. But what happens at present in Europe and in the world is much more, indeed it is something quite different from the mere ebbing away of such an occurence. To continue the comparison the waves rise anew from the deep; they are fed by mysterious and constantly emerging forces;

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these are those restless ideas, aiming at the disaster of nations, of which I spoke and nothing could give me the lie when I maintain that everybody, victor and vanguished, is living in the middle of a crisis which disturbs the conscience of the individual and the nations as a monstrous, apparently inevitable nightmare and which, beyond the punishment of guilty individuals causes us to look out for those means and ways which can spare humanity from an even greater catasprophe.

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In his "Confessions of a Revolutionary", Proudhon, the clear-sighted socialist wrote the memorable words: "Every great political problem also always has within itself a theological one". He coined this phrase 100 years ago. It is most timely that the American general Mac Arthur, at the signing of the Japanese surrender agreement is said to have repeated these deep words in their essential meaning, by saying: "If we do not create a better and greater system death will be at our door. The problem is fundamentally speaking a religious one".

The changes in religious values determine history. They are the strongest motive powers in the cultural process of humanity. Permit me to show you in a few, rather large strokes the intellectual and historical forbears of National Socialism.

Renaissance, Subjectivism, French Revolution, Liberalism, National Socialism.

The clamor of the great struggle between the Middle Ages and Modern Times has filled the last centuries until this very hour. To its victims belong since 1914 primarily the women, since 1939 primarily the children. The apocalyptic battle is in full progress for the 2000 year-old meaning of the occident, the motherland of the material as well as the personal culture of humanity. Its object is the steadily growing anthropocentric humanism which makes the human being the measure of all things, the secularisation of religion. It announces itself in the renaissance, becomes completely clear in the enlightenment of the 17th and 18th century and in the intellectual movements of the 19th century

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How many good reasons and motives there were, the way over the Renaissance and the schism of the 16th century has proved to be wrong. At its very end stands, for the present, the ideology of National Socialism. In the heads of its most extreme champions National Socialism culminated in the radical demand for the fight unto death against Christianity. Therefore this ideology was in its deepest meaning a philosophy without love and because of this, it extinguished the light of reason in those addicted to it. To that extent the head himself of this heresy proclaimed a truth.

Goethe expressed this problem in this following way: " The world history is the struggle between belief and unbelief." And I maintain, based on the declarations of the greatest minds in all camps of religious confessions, that the history of the nations, just as before it was a strug le for the natural divine right of men, for 2000 years is a struggle of the intellect for the christian men. These percepts are in fact such that one may not doubt them even for a short moment without the mind beginning to reel and to stagger helplessly between truth and error. It is cause for reflection that Hitler rejected the wonderful characteristic of a truly kind man that we call humility, because he had decided in favour of Machiavelli and Nietzsche, and that now the fate of the Germans is humiliation without a precedent. One may reflect upon the fact that Hitler denied the virtues of pity and mercy, and that now millions of women and children raise their hands, that now the seemingly killed"law" grows enormously whereas Hitler surrounded himself with wrong. The real and last root of these calamitous modern movements which threaten state, society and Christianity, is yon rootless liberalism in the meaning of the previously mentioned anthropocentric humanism, as Maritain calls it. Men and his autonomous reason become the criterion of everything. The question should force itself upon every thinking man why just from the turn of the 9th century until present times catastrophes of humanity have occurred which in history, I should almost like to say find their parallel only in cosmic catastrophes. Two world wars, with revolutions as an anacrusis are never an accidental development but rather a development by necessity for the human race on the basis of a definite intellectual-religious error.

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Rationalism found, coming from England, its way to France and when coming there changed its physiognomy I believe that the paganism of the ancient times had hardly anything like Voltaire. No sooner had rationalism become the state religion of France, when the French revolution burst into flames and wrote the idea of the emancipated human rights with flaming letters into the sky of Europe. In spite of the proclamation of the human rights, mankind waded through blood as if this was the way to freedom. Sarcastic and scornful laughter at everything sacred went through the raving masses. When the French revolution had put into practice its state founded on Reason the new institutions did not prove quite so reasonable. The "brotherhood" was, compared with the glamorous promises of the rationalists a bitter disappointing caricature. Soon these ideas conquered also Germany;for Germany looked, with amazement and awe, towards France in this century. The manifestation of religion became a religion of pure humanity. The last step was taken by Kant; he drew the last consequence from the principle of free science. Hegel abolished the personal God and replaced him by the absolute reason. The state is everything, it is God, it's will is God's will, in the relations to it there are no natural rights; it creates religion, law and morality by virtue of its own sovereignty. Hitler, anew, placed the sovereignty into the people as a race Hegel's disciples destroyed the last vestiges of the moral fundaments of society, state and law. Only the genius of a man like Leibnitz, in whom the intellect of the German nation tried to concentrate itself for the last time stood alone in a sea of the rational ideology. Voltaire ridiculed the German thinker not only in France, but also in Berlin. The last stage are connected with the names of Nietzsche and others Nietzsche has, as no other modern man, reasoned the modern ideologies to the end and proclaimed with dauntless logical consequence where the present development would inevitably lead to. Thus the road leads from Kaligula and Julian Apostata over many geniuses, glorified by the whole world, but truly destructive in their effects, directly to Hitler.
Ancient paganism, - modern paganism, which of them is worse ?
Therefore, as Donoso Cortes explains so wisely, there will be no more hope for the society which has exchanged the idolatry of reason for the stern cult of Christian truism. After the sophisms come the revolutions and behind the sophist walk the executioners.

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When Hitler, returning from the first world war, decided, as he said to become a politician, he declared to have found the powers which, with its national and social elements could free Germany from its misery. But fundamentally his ideology was only another step on the already worn out road to complete autonomy of the so-called natural common sense, to which he so often referred. Naturally he had his teachers. The apotheosis of his own people traces back to Fichte, the ideal of the master man to Nietzsche, the relativity of moral and right to Macchiavelli the race cult to Darwinism. We became witnesses to their practical effect; for this road leads straight into the concentration camps, to the destruction of other races, to the persecution of Christians. But the outside enemies of the National Socialism succumbed to the same ominous idea of "natural common sense" by killing with their bombs millions of non combatant women and children and destroying just as many dwellings in German villages and cities. The victor, not even in a defensive war, must not try to excuse these events with" military necessities" in the meaning of the Charter. The cultural values of this city, in which this Tribunal sits, or of Dresden, Frankfurt and many other cities were the cultural property of the entire Occident. All this, and the enormous misery of the flood of the refugees from the East and the fate of the prisoners of war is part of the theme of the intellectual and cultural analysis of National Socialism.

Is Kaltenbrunner guilty?

In the midst of this spiritual situation in general stands the figure of the defendant Dr. Kaltenbrunner. The fatherland was already bleeding from a thousand wounds of its sensitive soul and of its gigantic power. Is this man guilty? He has pleaded not guilty and yet guilty. Let us see which is the truth.

As I emphasized at the beginning Kaltenbrunner, until the year 1943, was, in comparison with the other defendants at this trial, a man who was hardly known in Germany, at any rate the one who had hardly any association with either the German public or the high officials of the

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regime. In those days when the military, economic and political fate of the German people had begun to roll with crazy velocity towards the abyss, hate and abhorrence of the executive were at their climax, the more so, as the paralyzing sensation of the hopelessness of any resistance against the terror of the regime had disappeared; people had then definitely turned away from the legend of invincibility preached by propaganda. Suddenly, so to speak, and without the existence of any special ability nor of any application, Kaltenbrunner was drawn into the net of the greatest accomplice of the greatest murderer, from his secluded, and, notwithstanding the Austrian Anschluss,-from the viewpoint of international criminal law - untainted life. Not voluntarily, on the contrary, against his repeated resistance, and against his exertions to be ordered to the fighting front.

I can well understand that I will be answered,that I should in view of the sea of blood and tears, refrain from illuminating the physiognomy of this man's soul and character. But deep in my heart - and I beg not to be misunderstood - I am , while exercising my profession as a counsel, even of such a man, moved by the universal thesis of the great Augustine hardly intelligible for the present godless generation: "Hate error, but love man". Love? indeed, in so far as it should pervade justice; because justice without this nobility of love becomes plain revenge, which the prosecution explicitly contends to disavow. Therefore, for the sake of this justice, I am to show you that Kaltenbrunner is not the type as repeatedly described by the prosecution, namely the "little Hitler", his "confident", the "second Heydrich."

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I do not believe that he is the ice cold being as the witness Dr. Gisevius has made him out to be here in such an altogether negative manner, in fact from hearsay only. The defendant Jodl has testified before you that Kaltenbrunner did not belong to Hitler's confidants who always got together with him after the daily situation conferences in the Fuehrer headquarters. And the witness Dr. Mildner has stated on the basis of direct observation, without his testimony having been doubted by the prosecution:

"From my own observation I can confirm: I know the defendant Kaltenbrunner personally. In his private life he was an irreproachable man. In my opinion he was promoted from Higher SS and Police Chief to Chief of the Security Police and of the SD, because Himmler after the death of his principal rival Heydrich in June 1942 did not want any man anymore or did not tolerate anybody under him who could have endangered him in his position. The defendant Kaltenbrunner was no doubt the least dangerous man for Himmler. Kaltenbrunner was not ambitious to bring his influence to bear through special deeds and to push finally Himmler aside. He was not hungry for power. It is wrong to call him the "little Himmler "

German protocol page 7597.

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The witnesses Eberstein, Wanek and Dr. Hoettl have expressed themselves in the same manner. (Compare document book)

And yet this man took over the office of the Reichssicherheitshauptamt, yes, he did indeed take it over to the fullest extent.

I know that today this man suffers a great deal under the catastrophe of his people and under the uneasiness of his conscience; nothing is more understandable then that Dr. Kaltenbrunner, knowingly or unknowingly, can no longer face the fact that he actually was in charge of an agency under the burden of which rocks would talk if that could have been possible; personality and character of this man will have to be judged differently from the way the prosecution has been doing this.

For the psychologist the question arises how a man, let us say, with normal civil virtues, could take an office under his control, which became the very sum total of human slavery of the 20th century, as far as Germany is concerned. There may be two reasons for taking over this office nevertheless: One is based on the fact that Dr. Kaltenbrunner, although closely connected with the political and cultural interests of his Austrian homeland; supported National Socialism in its large scope. Because before he turned into the sidepath with his secrets, he marched with thousands and hundreds of thousands of other Germans, who desired nothing else than a solution from the unstable conditions prevailing at that time, on that wide road into which the eye of the entire world had insight. Therefore, he was, without a doubt a follower of anti-semitism, however, only in the sense of the necessity for retrograding the flooding of the German race with alien elements, he condemned just as harshly the mad crimes of physical annihilation of the Jewish race, as Dr. Hoettl definitely stated.

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Kaltenbrunner surely affirmed also Hitler's personality as far as it did not, by and by become apparent in its absolutly misanthropic and thereby un-German nature. Also fundamentally he approved, as he himself admitted during his interrogation, measures which implied, more or less severe compulsion, as for example, the organisation of labor education camps. Therefore, no sensible person will want to question the fact that he deemed the establishment of concentration camps quite proper, at least a provisional measure especially during the war as this had been the case for a long time on the other side of the German border. The establishment of concentration camps, or however one wishes to call those places, at mentioning of which the listener involuntarily is reminded of words by Dante, is unfortunately not unknown to many states. History knows of them from South Africa for some decades, from Russia, England and America during this war, for the admission among others, of persons who for reasons of conscience do not want to serve with arms. In Bavaria, in the land in which the tribunal presently sits, these sort of camps are also known: known is also the so-called "automatic" arrest for certain groups of Germans. Under the heading: "Political Fundamentals" in item II 5 of the text of mutual declaration of the three leading statesmen about the Potsdam Conference of 17 July 1945, the statement is contained that, among others, all persons who are dangerous for the occupation or its aims shall be arrested or interned.

The necessity of camps of this sort is thereby recognized. I myself hate the organization of human slavery, but I state openly, that these institutions lie on the way which when followed to the end can and will bring suffering to persons of a different opinion, then desired by the state. By this the crimes in the German concentration camps shall not in the least be diminished. As far as Kaltenbrunner is concerned this man, according to my conviction and as it can be affirmed by many witnesses, is in his character and his attitude appearent since 1943, basically a national socialistic leading personality, who only with disgust took notice of the general trend, of the continually growing wave of terror and onslavement in Germany.

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For this reason I deem it important to point to the statement of the witness Eigruber, according to which the statement of the prosecution is wrong, that Kaltenbrunner established Mauthausen.
(Doc. Kr. 6, question 1 and 2)

The second motive lies in the subject of the two conversations with Himmler, about which he testified. Thereby Kaltenbrunner was but prepared to take over the agencies of the domestic and foreign intelligence service within the Reichssicherheitshauptamt, resting on Himmler's promise that he would be allowed to centralize this intelligence service, namely in the direction of absorbing and connecting the political intelligence service with the hitherto military one of Admiral Canaris. The witnesses Waneck, Dr. Hoettl, Dr. Mildner and Ohlendorf and also the defendant himself are indubitably correct in testifying that Himmler, making allowance for Kaltenbrunner's wishes, from the murder of Heydrich, interpolated himself into the executive body, so that nothing of some importance took place in any executive field in Germany without Himmler having had the final word and thus issuing the decisive order.

The witness Waneck confirmed to the subject of those two conversations of Kaltenbrunner with Himmler in the following words, which I shall quote because of their importance: "When material problems arose Kaltenbrunner frequently remarked that he had come to an understanding with Himmler to work rather in the field of the foreign political intelligence service and that Himmler himself wanted to take more influence in the executive functions.

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To my knowledge Himmler agreed to these adjustments, the more so as he believed that he could depend on Kaltenbrunner's political instinct in foreign affairs, this would follow from various remarks made by Himmler."

Various witnesses testified that Kaltenbrunner predominantly and from inner necessity actually made himself over to the Intelligence service in domestic and foreign countries and more and more approached an influence on domestic and foreign politics he was hoping for. I am calling attention to Waneck, Dr. Hoettl, but then also to the defendants Jodl and Seyss-Inquart and Fritsche. Dr. Hoettl testified: "In my opinion Kaltenbrunner never completely mastered the large agency of the Reichsicherheitshauptamt and, from lack of interest for police and executive problems, occupied himself far more with the intelligence service and with the influence on the entire policy. This he considered his real domain."

From the testimony by Generaloberst Jodl I am stressing the following sentences: "Before Kaltenbrunner took over the intelligence service from Canaris he sent to me, from time to time, very good reports from the Southeastern territory, whereby I first noticed his experience in the intelligence service..... I had the impression, this man knows his business ; I now received continous reports from Kaltenbrunner, the same as before from Canaris; not only the actual reports from agents but from time to time he sent to me a, I almost want to say, political survey on the basis of his individual reports from agents. I noticed especially these condensed reports on the entire political situation abroad because they revealed, as never before under Canaris, a frank, sobriety, and the seriousness of our entire military position."

On the basis of the evidence I am therefore arriving, without any constraint at the following result:
Kaltenbrunner on the basis of the separation of the intelligence service from the executive police functions desired by him actually held a position in the Reichsäicherheitshauptamt which was principally aimed at the intelligence service and its continuous development.

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This was the lifework of this man as he himself wished it to be for the duration of the war. Personally he lived in small economic circumstances and it is the truth when I say, that he steps off the stage of political life just as poor as he ascended it. The witness Waneck once made the statement, characteristic for Kaltenbrunner, that he, Kaltenbrunner , will retire completely from office after the war and return to the land as a peasant.

Only with deep regret the spectator will state that under the pressure of the political and military events this man did not observe the border-line, as desired by himself. His obedience toward Hitler and therefore also toward Himmler had submitted to the apparent necessity in the years 1943/45, to guarantee the stability of the inner-German relations through police compulsion. Thereby he became involved in guilt; it is clear, that he can count on a milder judgement of his guilt before the world conscience only if he could have produced evidence that he a c t u a l l y under-took a strict separation from section (Amt) IV of the Secret State Police rightly called demoniacal, if he had in no way participated in the ideas and methods which, as I believe, eventually led to the institution of this trial. I cannot deny that he did not undertake this separation. Nothing is clearly proven in this direction, even his own testimony speaks against him. Thus his statement before the tribunal at the beginning of his interrogation may be explained, which I should like to define this as the thesis of his guilt:

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Question: "Do you realize that very special accusations have been brought against you? The prosecution accuses you of crimes against the peace as well as of your role of an intellectual principal or of a participator in committing crimes against humanity and against the laws of war. Finally the prosecution has connected your name with the terrorism of the Gestapo and with the cruelties in the concentration camps ? I now ask you: Do you assume the responsibility for these points of accusation in such manner as they are outlined and familiar to you?"

Answer: "First of all I should like to state to the court that I am fully aware of the serious nature of the accusations brought against me. I know that the hatred of the world is directed against me, since I am the only one here, because a Himmler, a Mueller, a Pohl are no longer alive, to answer to the world and to the court . . . . I want to state at the very beginning, that from the time of my appointment as chief of the Central Reich-Security-Office (Reichssicherheitshauptamt) I assume the responsibility for every wrong committed within the jurisdiction of this agency as far as it occurred under my actual command, and I thus knew or should have known of these occurrences."

Thus the duty of the defense is automatically divided by asking the questions:

1. What did Kaltenbrunner do, good and evil, from his appointment as chief of the Reichssicherheitshauptamt on 1 February 1943, on?
2. To what extent can it justly be said that, in the essential points, he did not possess sufficient knowledge about all the crimes against humanity and against the laws of war ?
3. In how far can his guilt be established from the viewpoint that he should have known about the serious crimes against international law in which Section (Amt) IV of the Reichssicherheitshauptamt (Secret State Police) was, directly or indirectly, involved ?

1. What has Kaltenbrunner done?

In this connection I am passing over the accusation brought against him by the prosecution, for his participation in the events of the occupation of Austria and Czechoslovakia; no matter with what energy he followed his goal to see his Austrian homeland incorporated into the German Reich, and to the end of this realization use the SS forces under his command: this aim can not have been a criminal one according to the world-conscience.

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Just as little could one, because of the forcible means at that time employed to accomplish the annexation of Austria, which was historically due and desired by millions, reach a verdict of guilt. Kaltenbrunner was still much too insignificant a man for that. Economic distress + Anschluss movement - National Socialism: This was the way of the majority of the Austrian people, not the National-Socialist ideology; for Hitler himself was from the standpoint of Austrianism a spiritual and political renegade. Yet the Austrian Anschluss movement was a people's movement before National Socialism had reached any importance in Germany. Austria wanted to protest against the Versailles and St. Germain ruling which forbade the Anschluss, by holding a plebiscite in each "Land". After 90% had voted in Tyrol and Salzburg, the victorious powers threatened to discontinue the shipment of food supplies. Hitler's seizure of power paralyzed the desire for Anschlusssamong those not of the party, but the distress in Austria become still more acute and isolated the Dollfuss-Schuschnigg regime. The incorporation into the Greater-German sphere of economics, where the removal of mass-unemployment seemed to be the source of hope, appeared to the greatly distressed Austrian people as the only way out. The wave of enthusiasm which on 10 October 1938 went through all of Austria was real. To want to deny this today would be to falsify history. The Anschluss, and not the Dollfuss-Schuschnigg government, was based on democracy. Just as little can one, I believe, according to the reasons mentioned above, reach a verdict of guilty for Kaltenbrunner because of his alleged activity in the question of Czechoslovakia. In my opinion the question of guilt and expiation becomes acute only for the time after 1February 1943. The indignation of the German people over one of the most infamous terroristic measures, the taking into protective custody, had already before this date become immense. Is it correct to say that Kaltenbrunner himself, of whom many orders for proctective custody bearing his signature are in evidence before the court, inwardly abhorrad this type of suppression of human liberties?

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May I refer to just a few sentences from his interrogations?
Question: "Did you know that protective custody was at all permissible and was used frequently?"
Answer: "As I have related, I discussed the idea of "Protective Custody" with Himmler, already in 1942. But I believe, already before this time to have corresponded quite extensively on this subject with him as well as once also with Thierack. I consider protective custody as applied in Germany only in a smaller number of cases a necessity of state, or better said as a measure such as is justified by war. For the rest I often, and well founded, according to the history of law voiced my opinion and turned against this conception and against the application of any protective custody in principle. I had several discussion about it with Himmler and with Hitler also. I had publicly taken my stand against it at a meeting of prosecutors, in 1944 I believe, because I have always been of the opinion that a man's freedom is one of his highest possessions, and only the lawful sentence of a regular court of justice, rooted in the constitution may limit or take away this freedom.

Here the same man expresses the right principles. The observance of which would have spared the German people and the world from untold suffering, and the non-observance of which constitutes the guilt of this man who in spite of his right perception suited his actions to the so-called necessity of the State. He thereby, against his own will and knowledge, became subject to the principle of hatred, which sooner or later will always shake or shatter. the foundations of the strongest state. "Right is what benefits the people", Hitler had proclaimed. I well believe that Kaltenbrunner today deeply regrets to have adhered too long to this maxim.- -

Although the prosecution has not been able to produce even one single original signature of Kaltenbrunner in connection with order for protective custody and I do not think it incredible when Kaltenbrunner deposes, that never did he himself put into effect such an order for protective custody by his signature; nevertheless in view of the tragical results due to so many of these orders I do not need to say even one word as to whether he is entirely blameless or is much less to blame because these orders had perhaps been signed without his knowledge; then of course the question arises immediately how such an occurrence could be possible in, it is true, an extraordinarily large office.

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Be that as it may: In affairs of such depth and such tragic outcome one does not feel inclined to make any difference between knowledge and ignorance due to negligence because one wants to hold everyone occupying a post in an office responsible for what happens there. This recognition is also the meaning of Kaltenbrunner's statement regarding his fundamental responsibility as cited above. Where the happiness and fate of living men are involved it is impossible to retreat under the pretext of ignorance in order to avoid punishment, at best for the purpose of mitigation of sentence. The defendant knows this too. Orders for protective custody were the ominous harbingers of the concentration-camps. And I am not giving out a secret when I say that the responsibility for issueing orders for protective custody includes already the beginning of responsibility for the fate of those held in the concentration camps. I could never admit that Dr. Kaltenbrunner may have known of the excesses of suffering of the thousands who languished in the camps; for, as soon as the gates of the concentration camps were closed there began the exclusive influence of that other office, the frequently mentioned central for economy and administration (Wirtschafts- und Verwaltungshauptamtes). Instead of referring to many statements of witnesses to this point I refer to the one of the witness Dr. Hoettl who, when asked about subordination in rank, replied: "The concentration-camps were exclusively under the command of the SS-Central office for economy and administration, hence not under the central Reich-security main office and therefore not under Kaltenbrunner. In this sphere he had no authority of command and no competency." Other witnesses have said that of necessity Kaltenbrunner should have had knowledge of the sad conditions in the concentration camps, but there is no doubt that the commanders of the concentration-camps themselves deliberately concealed penal excesses of the guards from their superiors.

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It is furthermore a fact, that the conditions found by the Allies upon their arrival were almost exclusively the results of the catastrophic military and economic situation during the last weeks of the war and which the world mistakenly took for general conditions of former times. The above statement is fully verified by the statements of the camp-commander of Auschwitz, Hoess, who, because of his later activity in the system of concentration camps of the central office for economy and administration, had made an accurate survey. For Hoess there exists no inward reason whatsoever to give a false testimony. A person like him, who has sent millions of men to their deaths, comes no longer under the authority of human judges and considerations. Hoess stated: "The so-called mistreatment and tortures in the concentration camps .... were not, as assumed a method. They were rather excesses of individual leaders, sub-leaders and men who laid violent hands upon the inmates." These elements themselves were, according to the statement of Hoess, taken to task for that. I believe I need not go into anymore details of how, according to various witnesses, visitors of the concentration camps were impressed and surprised by the good condition, cleanliness and order in the camps and therefore no suspicion was aroused as to special sufferings of the inmates. But it would be worse than bad taste if I contested the fact, that a chief of the intelligence service, if only on the basis of foreign news of atrocities, should not have felt the responsibility in the interest of humanity to clear up any doubts arising along that line. This seems to be confirmed by the statement of Dr. Meyer of the International Red Cross (Doc. Kr. 4, Question 7), for the permission to have the International Red Cross visit the Jewish Camp at Theresienstadt and to allow food - and medical-supplies to be sent in, seems to be proof of the bad conditions in the camps during the last months of the war; nobody would allow neutral or foreign observers to have insight into the camps if it had been known that crimes against humanity occurred regularly in the camps, as is asserted by the prosecution. In any case I do not come to the result that Kaltenbrunner had full knowledge of the "conditions" in the concentration camps, but that it was his duty to investigate into the fate of those who where imprisoned. Kaltenbrunner might have found out then, that a considerable number of the inmates was sent to the camps because they were criminals, a much smaller portion was there because of their political or ideological viewpoints or because of their race etc; but that he would have found out about those primitive offenses against humanity, about those excesses and all the distress of these people, I do contest in agreement with Kaltenbrunner.

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The way to arrive at the truth was immensely complicated in Germany, and even the chief of the Reichssicherheitshauptamt found nearly unconquerable obstacles in the hierarchy of jurisdiction and authority of other offices and persons . The improvement of the sad lot of the internees was from 1943 a problem which could have been solved only through the dissolution of such camps. A Germany of the last 12 years without any concentration camps would, indeed, have been an utopia. On the whole, Kaltenbrunner was but a small wheel of this machinery. In the preceding, paragraph, I spoke about the subject of the orders for protective custody and of their effect.

Dr.Kaltenbrunner has affirmed the necessity for work education camps, owing to - as stated by him during his examination- the conditions then prevailing in the Reich,to the short comings of the labor market,and to other reasons,and, if I am not mistaken, have no convincing proof was submitted of mistreatment and cruelties in such camps. The reason may well lie in the fact that these camps were in some respects only related to, but not on equal footing with concentration camps. With all available means of evidence,Kaltenbrunner has opposed the accusation of having covered orders of execution with his signature. The witnesses Hoess and Zutter state that they saw such orders in isolated cases. The prosecution,however, does not seem to have proved that any such orders were issued without judicial sentence or without reasons justifying the death, with the exception, though, of a particularly serious case reported from hearsay by the witness Zutter,adjutant of the camp commander of Mauthausen. Thereby,a teletype signed by Kaltenbrunner is said to have authorized, in the spring of 1945, the execution of parachutists.An original signature by Kaltenbrunner is entirely lacking.I think I may assert that he did not sign any such orders concerning life and death,because he was not authorized to do so. Dr.Hoettl as a witness stated: "No, Kaltenbrunner did not issue such orders and could not in my opinion give such orders (for killingJews) on his own accord". And Wanock explicitly confirmed as follows:

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It is known to me that Himmler personally decided over life and death and other punishment of inmates of concentration camps.

Thus the exclusive authority of Himmler in this sad field may be considered proven.

It would however be presumptious if I were to deny the guilt of Kaltenbrunner completely on this point. If such orders were executed on members of foreign powers, for example an order based on the so-called "Commando-Order" of Hitler of 18 October 1942, then there arises the question of the responsibility of that person, whose signature was affixed to these orders, because the misuse of his name by subalterns was possible. It is certain that Kaltenbrunner had exerted not the least influence in originating the "Commando-Order". It can, however, hardly be doubted that this decree in itself constituted a violation of International Law. The development of the second World War into a total war by necessity created an abundance of new stratagems. Even where bona fide soldiers were employed in their execution a motive of bitterness, humanly quite understandable, over the perhaps gangsterlike conduct of command troops concerned and other things could not justify the order. Fortunately but very few people fell victim to this order of Hitler. Perhaps one would ask me, whether it is my duty or whether I am only permitted to reiterate such points of incrimination as I have just done, since this seems to be the task of the prosecution. To this I reply: If the defense is so liberal as to admit the negative side of a personality, it surely is apt to be heard more readily when it approaches the Tribunal with the request to appraise the positive side in its full significance. However, is there a positive side at all in the present case? I believe, I may answer in the affirmative I already pointed out several facts, which are connected with the time of the assumption of office by Kaltenbrunner. During the short time of 2 years of activity, this man has made himself a bearer of happy and humane ideas. I wish to remind of his attitude toward the lynch-order of Hitler with respect to downed enemy aviators.

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The witness, General of the Air Force, Koller portrayed the decent conduct of Kaltenbrunner which led to a total sabotage of this order. After first describing the contents of Hitler's order and Hitler's threat then pronounced during the discussion of the situation, namely that all and any saboteurs of this order shall be shot dead, Koller continues to repeat the assertions of Kaltenbrunner. Permit me to quote a few sentences of the statements of Koller.

"Kaltenbrunner said: The tasks of the S.D. are continuously given a wrong interpretation. Such matters are not the concern of the S.D. Moreover, no German soldier will do, what the Fuehrer demands. He does not kill prisoners and if a few fanatic partisans of Mr. Bormann try to do so, the German soldier will interfere..... Furthermore, I myself will do nothing in this matter...."

Koller and Kaltenbrunner, in other words, were fully agreed on that matter. This positive action of Kaltenbrunner, important for the judgment of the actual nature of his personality, does not stand alone. Witness Dr. Hoettl confirmed the fact, that in questions of the future fate of Germany, Kaltenbrunner went if not beyond/so at least up to the borderline of high treason. This witness for example confirms that Kaltenbrunner in March 1944 caused Hitler to moderate the plans concerning the Hungarian question, and that he succeeded in preventing the entry of Rumanian units into Hungary. It was by the exertion of his influence that the planed regime by an Hungarian National Socialist Government did not materialize for some time. Dr. Hoettl then says literally: Since 1943, I advocated towards Kaltenbrunner, that Germany must attempt at all cost to end the war. I informed him of my connections with an American authority in Lisbon. I also informed him, that by way of to the Austrian resistance movement I had taken up new contacts with an American authority abroad. He declared to be prepared to go to Switzerland with me and there to take up personally negotiations with the American representative, in order to prevent further useless bloodshed."

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The depositions of witness Dr.Neubacher run along the same lines. This witness testified to an important positive human action of Kaltenbrunner. Upon the question,whether Kaltenbrunner had assisted the witness in moderating as much as possible, terror policies in Serbia, Dr. Neubacher answered- and I quote-: "Yes, in this field I owe much to the assistance of Kaltenbrunner. The German police agencies in Serbia knew of me and of Kaltenbrunner that he, in his capacity as Chief of the foreign intelligence service (Auslandsnachrichtendienst) uncompromisingly assisted my policies in the south-eastern territory. Thereby my ability to influence the police offices was accomplished. Kaltenbrunner's assistance was of value in my aspirations to overthrow the then prevailing system of collective responsibility and repression with the aid of judicious officers."
I am further mentioning the relief work of the Geneva Red Cross, which is due to the initiative of Kaltenbrunner. The activity of the defendant with respect to this, was portrayed by the witnesses Prof.Burckhardt, Dr.Bachmann and Dr.Meyer. As a consequence many thousands were able to exchange their captivity for liberty. I should like to point your attention to a few words, submitted by the defendant Seyss-Inquart on two points. He mentioned that Kaltenbrunner worked for a complete autonomy of the Polish state as well as for the reintroduction of the independence of both Christian Churches.
Kaltenbrunner tried to realize his human intentions not only in this field. Therefore it seems to me to be of significance, to point out his efforts to make Austrian Gauleiters understand, that any resistance against troops of the Western powers would be senseless and that in view of this irresponsible orders for resistance, were not to be issued. This was confirmed by the witness Wanock. The prosecution held Kaltenbrunner responsible for the evacuation and planned destruction of certain concentration camps. I believe, this proof may not only be considered as

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unsoccesful, but rather as a proof for the contrary. Upon the question addressed to Dr.Hoettl, whether Kaltenbrunner had instructed the Commandant of the concentration camp Mauthausen to surrender the camp to the advancing troops, Dr. Hoettl answered:

"It is correct, that Kaltenbrunner issued such an order. He dictated it in my presence for transmission to the Camp Commandant."

As a supplement, Kaltenbrunner during his personal examination, declared very logically:

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Even if, according to his orders, the camp Mauthausen, filled with professional criminals, was not to be evacuated, an order to evacuate Dachau was devoid of any basis by reason of its - compared with Mauthausen - harmless inmates. According to the testimony of Freiherr von Eberstein, the destruction of the concentration camp Dachau with its two secondary camps was the wish dream of the then Gauleiter of Munich, Giessler.
Finally the witness Waneck confirmed the fact that such an order of Kaltenbrunner had not become known to him; that, however, due to his position with Kaltenbrunner he would have known it, had such an order been issued by the latter or even if the issuance of such an order had been taken into consideration.
Who actually issued these orders, can no longer be established with certainty. The witness Hoess in his examination, mentioned an order of evacuation by Himmler as well as directly by Hitler. In this connection it seems appropriate to me to point to Kaltenbrunner's participation in the sad case of Sagan as charged by the prosecution. With reference to Kaltenbrunner's statement, confirmed by the examination of the witness Wielen, it appears to me to be a proven fact, that this matter came for the first time before Kaltenbrunner only several weeks later, after the conclusion of this tragedy.
It also appears to me doubtful whether the so-called task units (Einsatzgruppen), deployed upon the basis of Hitler's "Commissar Order" of 1941, were still in existence and functioning after the appointment of Kaltenbrunner. Some facts speak for it, others against it. Kaltenbrunner denied the existence of these groups for the period, of his office as Chief of the Reichssicherheitshauptamt. I do not want to lose myself in details but I should like to point the attention of the tribunal to these doubts. The same applies, for example, to the bullet decree (Kugelerlass). Document PS 1650, USA 246 confirm that it was not Kaltenbrunner but Mueller, the Chef of Amt IV who signed the instructions involved, while document PS 3844, USA 801, deals with personal signatures of the defendant. It appears to me, that the first document deserves preference. May I draw your attention to such documents, which are rather inconclusive, insofar as they are based upon indirect observation.

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I trust that the Tribunal possesses sufficient experience in evaluating evidence so that I do not have to argue about this any further.

2. I have thus far voluntarily conceded the negative in order to be the more justified in emphasizing the positive in Kaltenbrunner's personality. Inhowfar however will I be justified in stating that Kaltenbrunner had actually insufficient knowledge of many war crimes and crimes against humanity which in the course of the last 2 years of war were committed with some kind of participation of the Section IV (Gestapo)?
Would such a defense offer the prospect of essentially exculpating the Chief of the Reichssicherheitshauptamt?
Kaltenbrunner admitted during his examination that he received knowledge of orders, instructions and directives - unmindful of their originating long before, in some instances even several years before his assumption of office- only very late, sometimes as late as 1944 or 1945.

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I will not at this moment try to prove in detail these statements of Kaltenbrunner's. The prosecution is out to find exclusively whether such orders, decrees, directives etc. were also executed during the period of time in which the defendant was in office as head of the Reichsecurity-mainoffice (Reichssicherheitshauptamt). It is also often very difficult for the defence-counsel to follow up the secretchannels of knowing or not knowing of a defendant. Perhaps the defence-counsel lacks sometimes the necessary distance for a free judging in view of the hecatombes of victims spread out across a whole contine and he is unjust. At his interrogation at court Kaltenbrunner once explained the difficult position he was in when he took over his office on 1st Feb 1943 and I hope that nobody will misjudge this situation. The Reich was still fighting and even in 1943 still dangerous for any adversary colliding with it. But it was already clear that it was a fight for a goal in the infinitel, far away and out of reach. Who tries to hold back the spokes of the wheels of a carriage rolling into an abyss at top speed will perish. Coupled with these conditions from which there was no way of escaping, there was an officiousness uncreative and caused by nervous insecurity in all areas of private and public life. Kaltenbrunner said with regard to this situation: "I beg you to put yourself into my situation. I came to Berlin in the beginning of Feb 1943. I began my work in May 1943 except for a few visits of introduction. In the fourth year of the war the orders and decrees of the Reich had piled up also in the executive sector already to many thousands on the table and in the filing cabinets of the civil service. It was impossible for a human being to read all that through even in the course of a year. Even if I had felt it to be my duty I could never possibly have made myself acquainted with all these orders. "In connection with this I remind you respectfully that according to the evidence given by the witness Dr. Hoettl and others the Reichsecuritymainoffice in Berlin had 3000 employees of all categories when Kaltenbrunner was in office

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and that according to the statement of the same witness, Kaltenbrunner never dominated this office completely. Nobody will be able to deny justification of the question, whether it was Kaltenbrunner's duty to have himself informed in the shortest possible time about the most essential proceedings, at least, in all the offices of the Main Office for Reich Security and whether he would not then very soon, after all, have obtained knowledge of, for example, Himmler!s and Eichmann's Jewish operation and many other serious terrorist measures. I may remind you that Kaltenbrunner in answering my questions declared repeatedly and emphatically before this tribunal that he protested regularly every time he heard of such occurences, addressin himself to Himmler and even Hitler, but that he had but little success and that only after a long while. The defendant, for example, traces back the stopping of the extermination of Jews by an order of Hitler in October 1944 to his personal initiative However difficult it may be to judge whether the power and influence of a single would have been sufficient to bring about the suspension of a program of extermination already in its final phase,I believe I may say without being incorrect that many ten-thousands of Jews owe it to this man that they escaped the hell of Auschwitz and still see the light of the sun. From the statements of Messrs. Dr. Brachmann and Dr. Meyer of the International Red Cross (Doc. Kr. 4 and 5. Question 4) it appears that Kaltenbrunner asked the International Red Cross to organize relief-shipments to a large political camp at Unskirchen near Wels.

Witness Wanek has characterized Kaltenbrunner's attitude towards the question of Himmler's Jewish policy as follows: He says: In the daily haste of our joint foreign-political labors and discussions we did not touch on the problem of the Jewish policy any more. At the time Kaltenbrunner came into office this question was already so far advanced that Kaltenbrunner could not have had any more influence on it. If Kaltenbrunner expressed himself at all on the subject, it was to the effect that mistakes had been made here that could never be mad good. This witness then finally confirms that this operation wa conducted independently of this enterprise owing to the through the direct channel of command of Himmler-Eichmann and says that the position of Eichmann which already had been a dominating on when Heydrich was still alive, had increased steadily, so that eventually he would have acted completely independently in the entire Jewish sphere.

(Doc. 8, Question 7)

Prof. Burckhardt states that Kaltenbrunner when discussing the

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Jewish question declared: It is the greatest nonsense, all the Jews should be released, that is my personal opinion. (Doc. 3, Question 18)

But in spite of all this, the fundamental question is raised for the problem of guilt: May a high official and the director of an influential office, whose subordinates in a far-reaching hierarchy continuously commit crimes against humanity and against the rules of international law, assume such an office at all or remain in such an office, although he condemns these crimes. But is it perhaps a different case, if this man has the intention of doing all that is humanly possible to break the chain of crimes and thereby finally to become a benefactor of humanity. The last question is in my opinion to be answered in the affirmative. It is to be appraised solely from the standpoint of the highest ethic principles. My further thought in this connection is the following: he who invokes his philanthropic intention is free of guilt if from the first day of his taking over such an office he refuses all active participation in the direct commission of injustice and even going beyond this, however, uses every conceivable possibility nay, seeks it out, so as to achieve the elimination of unjust orders and their execution through his never ending resistance and every kind of human cunning.

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The defendant himself has also sensed and clearly recongnized all these things. On account of the importance of the question I should like to refer to his interrogation:

Question:" I ask you whether there was a possibility that you might have brought about a change after having gradually learned the conditions in the Secret State Police and in the concentration camps etc. If this possibility existed , will you then say that an alleviation i.e. an improvement, was brought about in the conditions in these fields due to your remaining in office?

Answer: " I repeatedly applied for service at the front. But the most burning question which I had to decide for myself was whether the conditions would be thereby improved, alleviated or changed. Or is it your duty to do all that is possible in this position to change all the conditions that have here been so severely criticized? As my repeated demands to be sent to the front were refused, all I could do, therefore, was to make a personal attempt to change a system, the ideological and legal foundations of which I coul no longer change, which has been illustrated by all the order presented here from the period before I was in office; I coul only try to moderate these methods, so as to help to eliminat them definitely.

Question: "And so,did you consider it consistent with your conscience to remain in spite of this."

Answer: " In view of the possibility of constantly using my influence on Hitler, Himmler and other people, I could not in my opinion reconcile it with my conscience to give up thi position. I considered it my duty to take a personal stand against injustice."

As you see the defendant appeals to his conscience and you h to decide, whether this conscience,taking into consideration duty towards ones own country but also towards the community of mankind has failed or not.

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The duty which I have just mentioned, to resist the orders of evil exists in itself for every human being, regardless of his position; this duty is expressly affirmed by Kaltenbrunner also. He who holds a state-office, must in the first place be able to prove that he contributed toward abolishing the gigantic injustice which occurred in Europe as soon as he learned of it, if he does not want to become guilty. Has Dr. Kaltenbrunner presented sufficient proofs ? The answer to this question I leave to your judgment. But one thing I should like to express as my opinion: This man was no conspirator, but rather he was exclusively a man acting under orders, under compulsion.

Himmler's order was to take over the main Reich Security Office. Is it right that a given order should change the fundamental aspect of the problem ? This question is of the highest importance. The Charter of this tribunal has forbidden appealing to orders for the purpose of avoiding punishment. The reasons given for this by the American chief prosecutor proceeded from the presumed knowledge of the crimes or their background in the minds of the higher leaders which, therefore, prevented him from appealing to orders given. Like a red thread the fact runs through this trial that hardly one high official, in whatever position of public life he may have been, was put into office without the order of the highest representative of the legal authority of the state; for in the last three years of the war the already clearly distinguishable, inevitable destiny of the Reich meant for the holder of a high office the renunciation of that part of life which many people say makes life worthwhile. Even during the duration of the war orders held the office holder fast in his position as with an iron ring. There is also no doubt that he who refused to obey an order, especially in the last years of the war, had to fear his own death, and possibly also the extinction of his family. From whatever side we approach the problem of orders in Germany after 1933, the appeal to the above-mentioned state of necessity (Notstand) ought not to be denied to the defendant; because the principle of necessity, which exists also in the German criminal code and which probably exists in the criminal codes of all civilized nations, is based on the freedom of the individual being necessary for the affirmation of any guilt.

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If the perpetrator is no longer free to act, because another person deprives him of this liberty by endangering his life , then, on principle, he is not guilty. I do not want at this instant, to examine whether in the German world of reality of the last years such a direct immediate danger for one's own life always existed; an encroachment upon the freedom of the man receiving orders existed in smaller or larger dimension without doubt. It seems certain to me that Himmler would have interpreted a refusal of Kaltenbrunner to take over the direction of the Reich Security-Main Office as sabotage and would, as a necessary conclusion, have eliminated him.
Hitler was one of the greatest breakers of law that world history has ever known. Many even affirm the duty to kill such a monster, so as to guarantee for millions of human beings the right to freedom and life. At these trials the most different points of view with regard to the "Putsch" especially the killing of the tyrant have been proferred by witnesses and defendants. I can not recognize the duty, but the right is certainly not contestable. If the oppression of human freedom occurs by means of a clearly unjust, because misanthropic, order the scales in the now ensuing conflict between obedience and freedom of conscience will be turned to the side of the latter. Also the socalled oath of allegiance could not justify a different point of view because, as everybody feels, the obligation to allegiance presupposes duties of both partners so that he who treads under toot the obligation to respect human conscience in the person of his subalterns loses, at the same moment, the right to expect obedience. The tortured conscience is freed and breaks the ties which the oath had created. Perhaps some persons will not agree with my point of view on this problem and will point at the necessity of an orderly state of community and the wholesomeness of obedience especially in the interest of this orderly state, or they will point at the prudence of those in command and at the impossibility of knowing and evaluating all such orders as the person in command can, they will point to patriotism and many more other points of view. And although all that may be correct:

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It remains the absolute duty, to resist an order, the purpose of which, clearly recognizable for a subaltern, contains the realization of evil and violates unequivocally the sound sentiments for humanity and peace among peoples and individuals. The phrase "In the fight of a people for life or death there is no question of legality", is not thought out to the end . Even the immediate danger of life of the person receiving the order could not induce me to change my conviction. Dr. Kaltenbrunner would not deny that he who stands at the head of an office, of great importance to the community, is obliged to sacrifice also his life under the above-mentioned provisions. If, however the d rect present danger for his own life and that of his family can not excuse him, it does moderate his culpability. Kaltenbrunner only means to point to this moral and legal evaluation of his position. Thus he emphasized a fact, historically proven, which was one of the deeper reasons for the collapse of the Reich; for no living man can bring liberty, peace, and welfare to a country, who himself carries chains reluctantly and has lost that freedom which is the decisive characteristic of all human beings. I believe Kaltenbrunner would like to be reborn and I know that he would fight for that freedom with his life's blood. Kaltenbrunner is guilty; but he is less guilty then he appears to be for the prosecution. He will await your judgement as the last representative of an ominous symbol of a period of the Reich darker and more laden with anguish than any other period and yet he was a man, one could not meet without a feeling of pathos.